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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,305	11/24/2003	Tamara Ceballos	A-TOOTH.D.PAT	4130
7590 03/22/2005			EXAMINER	
FRANK L. KUBLER 13261 S.W. 54th Court Miramar, FL 33027			FIDEI, DAVID	
			ART UNIT	PAPER NUMBER
			3728	
DATE MAILED: 03/22/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

58W

Office Action Summary	Application No. 10/720,305	Applicant(s) CEBALLOS, TAMARA	
	Examiner David T. Fidei	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Priority

1. THE DISCLOSURE DOCUMENT IS NOT A PATENT APPLICATION, AND THE DATE OF ITS RECEIPT IN THE USPTO WILL NOT BECOME THE EFFECTIVE FILING DATE OF ANY PATENT APPLICATION SUBSEQUENTLY FILED. THESE DOCUMENTS WILL BE KEPT IN CONFIDENCE BY THE USPTO, M.P.E.P. §1706.

Specification

2. The disclosure is objected to because of the following informalities: The reference to the disclosure document to establish a continuing filing date, page 1, lines 8 and 9 or the disclosure, is inappropriate, see paragraph 1 above.

Also, page 8, line 25 has a spelling error.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-6, 9 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Hibbs (Patent no. 1,975,691). A combination is disclosed in figure 1 of Hibbs comprising a holder body 11, at least on tooth brush receiving port 19 and at least one toothpaste tube receiving port 20 sized to receive a tube of toothpaste, see lines 60-65.

As to claim 2, the toothbrush receiving port opens through the outer surface top portion downwardly into said holder body to retain a toothbrush in an upright position, and wherein the toothpaste tube receiving port opens through the outer surface top portion downwardly into said holder body to retain a toothpaste tube in an upright position.

As to claim 3, the larger diameter port 20 can be used to receive a toothbrush, see lines 56-59. Hence there are at least four toothbrush receiving ports.

As to claims 4, the toothbrush receiving ports of claim 2 (which claim 4 depends) is at least one and would intrinsically have substantially the same diameter. Alternatively, the ports 17-19 of Hibbs appear to have substantially the same diameter.

As to claim 5, toothbrush ports 17-20 are of varying sizes as described previously.

As to claim 6, the cross-section is round as the device is round and a solid block as set forth in claim 9.

5. Claims 1, 2, 7, 8, 10 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Deconinck (Patent no. 4,219,035). A combination is disclosed in figure 1 of Deconinck comprising a holder body 1, at least one tooth brush receiving port 13 and at least one toothpaste tube receiving port 6a sized to receive a tube of toothpaste12.

As to claim 2, the toothbrush receiving port opens through the outer surface top portion downwardly into said holder body to retain a toothbrush in an upright position, and wherein the toothpaste tube receiving port opens through the outer surface top portion downwardly into said holder body to retain a toothpaste tube in an upright position.

As to claim 7, the body is considered hollow (having a cavity, gap, or space within, dictionary.com) by the present of spaces 4 and 7.

As to claim 8, a drain port 15 is located in the bottom wall.

As to claim 10, an elevation projection is formed by feet 2.

6. Claims 1-3, 6, 7, 8, 10-12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Stacy (Patent no. 5,522,497). A combination is disclosed in figure 1 of Stacy comprising a

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holder body 10, at least on tooth brush receiving port 60 and at least one toothpaste tube receiving port 62 sized to receive a tube of toothpaste, see col. 3, lines 6-15.

As to claim 2, the toothbrush receiving port opens through the outer surface top portion downwardly into said holder body to retain a toothbrush in an upright position, and wherein the toothpaste tube receiving port opens through the outer surface top portion downwardly into said holder body to retain a toothpaste tube in an upright position.

As to claim 3, see col. 3, lines 6-15 states up to six toothbrushes may be provided. Hence there are at least four toothbrush receiving ports.

As to claim 6, from the shape shown in figure 3, the body is substantially cylindrical with a cross section that is round.

As to claim 7, the body is hollow at 12.

As to claim 8 opening 54 define a drain port in the bottom wall.

As to claim 10-12, a continuous elevation is defined by a continuous loop projecting bottom rim 39.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hibbs (Patent no. 1,975,691). The difference between the claimed subject matter and Hibbs resides in the holder body being formed of plastic. Hibbs does not disclose what type of synthetic resinous material is sued to construct the holder in lines 45-47. Official Notice is taken that the use of plastic for a synthetic resinous is well known to those skilled in the container molding art. It would have been

obvious to one of ordinary skill in the art to modify to construct the holder body of plastic in view of Official Notice, in order to produce an expediently manufactured inexpensive holder.

9. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Deconinck (Patent no. 4,219,035). The difference between the claimed subject matter and Deconinck resides in the holder body being formed of plastic. Deconinck does not disclose what type of synthetic resinous material is used to construct the holder in lines 45-47. Official Notice is taken that the use of plastic for a synthetic resinous is well known to those skilled in the container molding art. It would have been obvious to one of ordinary skill in the art to modify to construct the holder body of plastic in view of Official Notice, in order to produce an expediently manufactured inexpensive holder.

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stacy as applied to claim 2 above, and further in view of Bjornrud (Patent no. 6,758,446). It would have been obvious to one of ordinary skill in the art to modify the apertures 60 of Stacy by constructing varying diameters as taught by Bjornrud col. 3, lines 1-5, in order to accommodate toothbrushes having handles of varying diameters.

Claim Rejections - 35 USC § 112

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claims 4 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not seen where said ports of claims 4 and 5 have antecedent basis in claim 2. At least one port is recited and the claim does not require toothbrush receiving ports. If the argument is made one or more is the scope of the claim then referring to said ports makes it unclear if one is the lower limit.

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Also, the ports are not required to have diameters. A port merely defines an opening. As such, the opening is of an undefined shape and reciting diameters relative to the ports makes it unclear what can be considered a port, apparently limiting the language to a shape having a diameter.

REPLY BY APPLICANT OR PATENT OWNER TO THIS OFFICE ACTION

13. “In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to every ground of objection and rejection in this Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. The applicant’s or patent owner’s reply must appear throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. The reply must be reduced to writing (emphasis added)”, see 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

Pointing out specific distinctions means clearly indicating in the written response what features/elements or distinctions have been added to the claim/claims, where support is found in the specification for such recitations and how these features are not shown, taught, obvious or inherent in the prior art.

If no amendments are made to claims as applicant or patent owner believes the claims are patentable without further modification, the reply must distinctly and specifically point out the supposed errors in the examiner’s action and must respond to every ground of objection and rejection in the prior Office Action in the same vain as given above, 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.


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The examiner also points out, due to the change in practice as affecting final rejections, older decisions on questions of prematurity of final rejection or admission of subsequent amendments do not necessarily reflect present practice. "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)" (emphasis mine), see MPEP 706.07(a).

Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David T. Fidei
Primary Examiner
Art Unit 3728

dtf
March 18, 2005